

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of KYLE SCHNEIDER, WYATT  
MANN, BRIANNA MANN, MARISSA MANN,  
and SARAH MANN, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

JILL SCHNEIDER MANN,

Respondent-Appellant,

and

JEFFERY MANN and SCOTT NICHOLSON,

Respondents.

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In the Matter of WYATT MANN, BRIANNA  
MANN, MARISSA MANN, and SARAH MANN,  
Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

JEFFERY MANN,

Respondent-Appellant,

And

UNPUBLISHED

July 27, 2010

No. 295413

Berrien Circuit Court

Family Division

LC No. 2009-000018-NA

No. 295414

Berrien Circuit Court

Family Division

LC No. 2009-000018-NA

JILL SCHNEIDER MANN,

Respondent.

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Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

In this consolidated appeal, respondent-appellants appeal as of right the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondents' residential instability, neglect of the children's educational, medical, vision, speech and developmental needs, domestic violence, participation in criminal enterprise, physical abuse, and respondent father's sexual abuse of the children and alcohol abuse clearly established respondents' failure to provide proper care or custody for the children.

The evidence showed no reasonable expectation that respondent father would provide the children with proper care within a reasonable time. He participated reluctantly and partially in services, and then only with animosity. He did not complete or demonstrate benefit from any aspect of his parent agency agreement. A warrant for his arrest was issued as a result of his continued contact with respondent mother, but even before his actions hindered his ability to participate fully in services and hearings for fear of arrest, he was not meaningfully invested in services.

Likewise, the evidence showed no reasonable expectation that respondent mother would provide proper care for the children within a reasonable time. While there was evidence that her counseling was curtailed because of agency budget issues, the testimony supported a finding that additional sessions would have been of limited benefit because she continued to deny either domestic violence or the sexual abuse of her children. She also denied knowledge of the children's participation in thefts with their father. There was testimony that she continued her relationship with respondent father despite a no contact order. She did not demonstrate an ability to protect the children or provide for them where she could not even acknowledge existing issues. She continued to lack stable housing despite referrals and offers of assistance, and the evidence showed she was not capable of addressing the children's significant, long-term, and demanding special needs.

Further, the evidence showed that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The children's needs were being met in foster care and their physical and emotional well-being improved once they were removed from respondents' care. There was no reasonable expectation that within a reasonable time respondents would provide the structure, empathy,

physical care, and stable and trusting home environment the children needed, or would follow through on effectively treating the children's special needs.

In reaching our conclusions, we would be remiss if we failed to recognize two additional issues raised for the first time on appeal. The standard for review of unpreserved issues is for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). First, respondents argue that the trial court deprived them of due process by failing to orally advise them at the adjudication trial that their no contest pleas could be later used at the termination hearing. We find no plain error requiring reversal. Respondents asserted in the trial court that they had read, understood, consulted with their attorney regarding, and signed the written form containing this advice. On appeal, they set forth no evidence indicating they did not understand the contents of the written advice of rights. "[A] party may not take a position in the trial court and subsequently seek redress in an appellate court on the basis of a position contrary to that taken in the trial court." *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997). More importantly, the trial court received ample evidence at subsequent hearings supporting termination of respondents' parental rights and did not rely on their pleas of no contest in making its decision. Thus, no error affecting the outcome of the case occurred.

Second, respondent father argues the failure to immediately appoint him separate counsel from respondent mother following their daughter's allegation of sexual abuse created attorney conflict of interest and deprived respondent father of the ability to present evidence. The right to due process indirectly guaranteed respondent father the assistance of counsel in this child protective proceeding, *Reist v Bay Circuit Judge*, 396 Mich 326, 349; 241 NW2d 55 (1976), and he was represented jointly with respondent mother until shortly before the termination hearing. The facts showed that, no later than July 1, 2009, when respondent father was informed that reunification services were being suspended and sexual abuse was substantiated, a conflict between respondents arose. However, respondent father ceased any communication with counsel after July and counsel was thereafter effectively representing only respondent mother from that time forward. In addition, the trial court stated it would appoint separate counsel for respondent father if he appeared to request it and prove eligibility. Respondent father did not do so. We find no deprivation of his right to counsel or to present evidence occurred in this case. The delay of joint counsel in moving to withdraw as respondent father's counsel was a plain error but it did not affect the outcome of the case. *Utrera*, 281 Mich App at 8-9. Respondent father was aware of his right to be represented and to present evidence, but he chose not to maintain contact with counsel or take any other steps to enable him to present evidence on his behalf at the September 28, 2009 review hearing. Further, he chose not to appear at the November 17, 2009 termination hearing to present evidence or receive new counsel. He claims he was prevented from participating in the proceeding because of an outstanding warrant for his arrest for non-compliance with a court order but, he does not specify on appeal what evidence he was prevented from presenting or its potential effect.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Stephen L. Borrello  
/s/ Cynthia Diane Stephens